

Application No. 10/047,545
Amendment dated October 4, 2007
Reply to Office Action of April 4, 2007

REMARKS

Applicant added new claim 221 to further define Applicant's invention.

In the Office Action, the Examiner indicated that claims 154-166 and 168-218 are allowed.

The Examiner rejected independent claims 219 and 220 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,683,463 to Godefroy et al. ("Godefroy") in view of U.S. Patent No. 4,878,915 to Brantigan ("Brantigan '915"). Applicant respectfully traverses the rejection of independent claims 219 and 220.

The Examiner indicates that Godefroy "discloses in figure 1-7 a fusion device, substantially as claimed," but that "Godefroy doesn't disclose a thread that extends along substantially the entire length of the body." Instead of disclosing threads, Godefroy teaches an implant having a body with "annular ribs 13, 14, and 16" that "are preferably toothed." (Godefroy, column 2, lines 58-59; Fig. 6).

The Examiner relies on Brantigan '915 for providing a thread. According to the Examiner, Brantigan '915 "teaches in figure 8 a fusion device comprising an arcuate portion (fig. 8) having a thread (32c, 32d) that extends substantially along the entire length of body." The Examiner indicates that "it would have been obvious to one having ordinary skill in the art at the time that the invention was made that the thread extending substantially along the entire length of the body as taught by Brantigan '915 could be incorporated into Godefroy in order to be able to secure the body of the fusion device along the entire length of the aperture formed in the vertebrae."

In response, Applicant submits that, contrary to the Examiner's contentions, elements 32c and 32d of a cylindrical plug 32 of Brantigan '915 are not threads. According to Brantigan '915, elements 32c and 32d respectively refer to "convex leading faces" and "concave trailing faces" of circular ribs 32b provided on the cylindrical plug 32. Using the circular ribs 32b, the cylindrical plug 32 is pushed, rather than rotated, into position. (Brantigan '915, column 6, lines 39-42). Therefore, the circular ribs 32b are akin to ratchets, not threads.

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Furthermore, even if Brantigan '915 does include threads, Applicant submits that the Examiner's stated motivation for modifying Godefroy to include threads is improper. The Examiner's stated motivation does not state why a person of ordinary skill in the art would seek such a modification. (See MPEP § 2143.01, "the Prior Art Must Suggest the Desirability of the Claimed Invention," page 2100-129, col. 2 (May 2004)). Godefroy teaches that "external ribs 13, 14 and 16 are preferably toothed to prevent both axial movement in translation and rotation of the Implant." (Godefroy, col. 2, lines 58-61 (emphasis added)). None of the Examiner's statements explain why the annular ribs of Godefroy should be replaced by threads. Moreover, the teachings of Godefroy do not support such a modification. Replacing the ribs of Godefroy with threads would assist in the rotation of the implant, and would, contrary to the Examiner's assertions, render the Godefroy implant unsuitable for its intended purpose of resisting rotation of the implant. (See MPEP § 2143.01, "The Proposed Modification Cannot Render the Prior Art Unsatisfactory For its Intended Purpose," page 2100-129, col. 2 (May 2004)). Accordingly, Applicant submits that the Examiner's rejection of independent claims 219 and 220 under 35 U.S.C. § 103(a) based on Godefroy in view of Brantigan '915 cannot be maintained.

In conclusion, Applicant submits that independent claims 154, 169, 195, 219 and 220, as well as new independent claim 221, are patentable and that dependent claims 155-166, 168, and 169-218 dependent from independent claim 154, 169, 195, 219, 220, or 221, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including


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any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: October 4, 2007

By: 
Thomas H. Martin
Registration No. 34,383

1557 Lake O'Pines Street, NE
Hartville, Ohio 44632
Telephone: (330) 877-0700
Facsimile: (330) 877-2030